

Message

From: Bertrand, Charlotte [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F044D768E05842E1B75321FF6010E1B8-BERTRAND, CHARLOTTE]
Sent: 4/4/2019 7:53:39 PM
To: Strauss, Linda [Strauss.Linda@epa.gov]
Subject: Re: OCSPP clips - search terms

Agree. But need OPP and OPPT to agree to stop theirs when we start ours. Is that what will happen?

Sent from my iPhone

On Apr 4, 2019, at 3:05 PM, Strauss, Linda <Strauss.Linda@epa.gov> wrote:

I spoke to coms staff from OPP and OPPT before I wrote this. I am actually thinking we could go ahead and get the intern working on this now (after I hear back). Then we could see what she comes up with, then work on an outline.

From: Strauss, Linda
Sent: Thursday, April 04, 2019 3:00 PM
To: Keigwin, Richard <Keigwin.Richard@epa.gov>; Morris, Jeff <Morris.Jeff@epa.gov>; Hughes, Hayley <hughes.hayley@epa.gov>; Siedschlag, Gregory <Siedschlag.Gregory@epa.gov>; Han, Kaythi <Han.Kaythi@epa.gov>; Sisco, Debby <Sisco.Debby@epa.gov>; Pierce, Alison <Pierce.Alison@epa.gov>; Blair, Susanna <Blair.Susanna@epa.gov>; Knott, Steven <Knott.Steven@epa.gov>
Subject: OCSPP clips - search terms

Alex is interested in getting news clips, one set for all OCSPP offices, with a structure similar to the OMR clips below. OPA will be soon be getting a clipping service but in the meantime they are willing to have an OPA intern start doing this for us ASAP if we give them the 1) key words to search, 2) a structure and 3) any special outlets that google news may not pick up (Inside EPA, E&E news). I have only briefly touched base with your offices to get input on this.

Are these the right "search terms" for now? If you can let me know today that would be good. After that, we will need to work on a structure. I think this will be an iterative process and what we do now will help us organize once we get the clipping service.

OPPT: Key word searches (searched with EPA):

- Frank Lautenberg Act
- Toxic Substances Control Act
- Toxic Chemicals
- Chemical Risk Evaluation
- Lead
- Formaldehyde
- PFAS
- PBT
- 1-Bromopropane
- Carbon Tetrachloride
- 1, 4 Dioxane
- Cyclic Aliphatic Bromide Cluster (HBCD)
- Methylene Chloride

- N-Methylpyrrolidone
- Perchloroethylene
- Pigment Violet 29
- Trichloroethylene

OPP:

- Pesticides
- Bedbugs
- Fleas
- Ticks
- Fumigants
- Carbofuran
- DDT
- FIFRA
- Insecticide
- Fungicide
- Rodenticide
- Insecticide
- Colony Collapse Disorder
- Honey Bees
- Antimicrobial
- Atrazine
- Chlorpyrifos
- Dicamba
- Glyphosate
- Herbicide resistance
- Mosquitos
- Bees
- Marijuana and Pesticides
- Worker Protection and Pesticides
- Plant pesticides
- ESA (Endangered Species Act) and EPA
- Animal testing EPA

OCSP:

- SACC

From: Mack, Sara
Sent: Monday, March 18, 2019 5:02 PM
To: AO OPA OMR CLIPS <AO_OPA_OMR_CLIPS@epa.gov>
Subject: Daily Clips 3/18

Air

[Bloomberg Environment: EPA's Pruitt Faced Hill Pressure on Glider Truck Rule Repeal](#)

[Inside EPA: EPA declines to tighten more air toxics rules](#)

Budget

[E&E News: Trump's budget would have a 'negative impact' --- IG](#)

Water Finance & Management: White House FY20 budget proposes cuts for EPA, Army Corps

Chemicals

E&E News: Critics pounce on EPA's mercury proposal

The Hill: Will this Congress be the one that finally acts on asbestos

Medical Press: EPA proposal will allow antibiotic spraying of citrus crops

National Memo: EPA Will Weaken Restrictions On Lethal Methylene Chloride

The New York Times: E.P.A., Scaling Back Proposed Ban, Plans Limits on Deadly Chemical in Paint Strippers

Clean-Up

CBS Los Angeles: Investigation Continues Into Gas Tanker Explosion As EPA Wraps Up Clean-Up Effort

Climate

Fox News: Former EPA advisor tells French President Macron to follow Trump's lead, 'shred' Paris climate agreement

The New Republic: Would the Green New Deal Survive the Supreme Court

Deference

Inside EPA: High court urged to reject push for preserving narrow EPA deference

Fuel

Irrigation & Green Industry: EPA proposes regulatory changes involving E15 fuel

MATs Hearing

Bloomberg Environment: EPA Effort to Undo Mercury Limits Challenged at Hearing

Public News Service: Groups Testify Against EPA Rollback of Mercury Regulations

The Washington Post: The Energy 202: EPA struggles for public victory with new toxic chemical protection

SREs

Feedstuffs: EPA's RFS waivers cut corn demand by 900m bu.

Water

Bloomberg Environment: Colorado Storm Knocked Out Plant Treating Mine Spill Water

Bloomberg Environment: Riverkeeper Can't Force EPA Action on New York Water Standards

Air

Bloomberg Environment

EPA's Pruitt Faced Hill Pressure on Glider Truck Rule Repeal

<https://news.bloombergenvironment.com/environment-and-energy/epas-pruitt-faced-hill-pressure-on-glider-truck-rule-repeal>

Abby Smith

Posted: 4:00am, March 18, 2019

- <!--[if !supportLists]--><!--[endif]-->EPA got policy officials working on rule repeal quickly after then-Rep. Diane Black sought Pruitt's help
- <!--[if !supportLists]--><!--[endif]-->Suggestion of inappropriate contact is 'meritless,' former Black aide, now glider kit lobbyist, says

The EPA's yearslong, tenuous effort to ease air pollution limits on trucks with rebuilt engines can be traced back to a day early in Scott Pruitt's tenure as administrator.

Just two months on the job, Pruitt was handed a memo at a "meet the Cabinet" event from former Rep. Diane Black (R-Tenn.), then chairwoman of the House Budget Committee, urging him to undo the Environmental Protection Agency's limits on "glider kits"—new truck chassis and cab assemblies built for used engines and transmissions.

A week later, Aaron Ringel, deputy associate administrator for the EPA's Office of Congressional Affairs and Intergovernmental Relations, asked aides in Black's office for electronic copies to send to the agency's policy officials.

"I know Admin. Pruitt told your boss he wants to be helpful!" Ringel wrote in that May 2, 2017, email, one in hundreds of pages of correspondence on the issue obtained through the Freedom of Information Act.

What followed was quick, consistent work from top officials in the EPA's air office on a proposal to repeal emissions limits on glider kits. The repeal met immediate and intense opposition from nearly all corners but the glider kit makers it would benefit. Fitzgerald Glider Kits, the largest U.S. maker of the equipment, is headquartered in Tennessee's 6th District, which Black represented.

The EPA's own data, in fall 2017 testing, show trucks with glider kits generally emitted four to 40 times more nitrogen oxides and 50 to 450 times more particulate matter than new model year 2014 and 2015 trucks.

The week after Ringel's email, on May 8, 2017, Pruitt met with Tommy Fitzgerald, co-founder of the glider kit maker, in his EPA office.

Top EPA officials checked with Black's office before the agency publicly announced it would reconsider the glider kit limits, the correspondence shows. And Black was in touch with the EPA for an update on the timing of the release while the repeal proposal was under review at the White House budget office.

'Lack of Transparency'

"What strikes me here is the total lack of transparency," Steven Silverman, a former attorney who worked in the EPA's Office of General Counsel from 1980 to 2017, told Bloomberg Environment.

"It's not inappropriate for congressional representatives to intercede on behalf of their constituents. It's a question of how you do it" and whether it's done in secret or out in the open, Silverman added.

The EPA didn't initially release Pruitt's calendar, shielding from the public his meetings with companies like Fitzgerald.

The EPA's repeal proposal, released in November 2017, has been dormant for months. The agency has struggled to distance its efforts from a study it cited in the proposal, funded by Fitzgerald and conducted by Tennessee Technological University, that showed glider trucks were just as clean as new trucks. The university has since disavowed that study after an internal investigation into research misconduct.

And the EPA faced legal challenges when Pruitt, on his last day in office in July 2018, attempted to ease enforcement of the glider kit restrictions. The U.S. Court of Appeals for the District of Columbia Circuit put that attempt on hold one day after environmental groups sued over it.

EPA Administrator Andrew Wheeler walked the action back in his first days at the helm.

"EPA continues to work towards addressing this matter and engages interested stakeholders accordingly," EPA spokeswoman Molly Block said in a statement March 14. Block didn't respond to questions asking for comment on the EPA's interactions with Black.

'Red Tape' of Government

When reached by phone, Black declined to immediately comment. Black passed on a congressional re-election campaign in 2018 to run for governor of Tennessee, but she lost her bid for the Republican nomination.

Former aides to Black say her work on the glider kit issue and her request that the EPA revisit the limits was all aboveboard.

The memo Black offered to Pruitt outlined her concerns, including that the Obama EPA didn't test glider trucks before restricting them in 2016. It also criticized the Obama administration for failing to consider the economic impact of restricting glider kits.

“The EPA’s rule will destroy any incentive for businesses to purchase or manufacture glider kits, effectively shutting down the glider kit industry altogether and destroying jobs in the process,” read the memo Black gave to Pruitt, a copy of which was obtained by Bloomberg Environment.

“Mrs. Black is passionate about helping constituents fight through the red tape of the federal government,” Teresa Koeberlein, Black’s former chief of staff, said in a statement March 15. “Her advocacy for Fitzgerald, a large employer in her district, was simply for the EPA to reconsider the rule that would eliminate hundreds of good, rural based jobs.”

Koeberlein noted that Black also advocated for Fitzgerald during the Obama administration, urging then-Administrator Gina McCarthy not to apply the restrictions to glider kits.

‘David and Goliath’

Black has previously defended her intervention at the EPA on Fitzgerald’s behalf.

“This is a very small trucking company that provides very good jobs for those small, rural communities that really struggle,” she told Nashville Public Radio in April 2018. “And I think this is a David and Goliath issue where the big trucking companies do not want to see someone be competition to them.”

Fitzgerald employs hundreds of people in the rural Upper Cumberland area of Tennessee’s 6th District. Local reports said the company in 2018 had to close at least one plant and cut dozens of jobs.

Major manufacturers of new trucks—such as Volvo Group North America Inc., Daimler AG, and Cummins Inc.—opposed repealing the glider kit limits, saying it would undercut the investments they made to clean up their fleets.

“The trucking industry has a well-documented history in supporting improvements in both emissions reductions and fuel efficiency,” Glen Kedzie, energy and environmental affairs counsel for the American Trucking Associations, said in a statement.

“It remains inequitable for fleets purchasing the newest, cleanest, and most expensive equipment on the road today” to have to offset pollution from glider trucks, which account for 33 percent of trucking’s emissions of nitrogen oxides and particulate matter but represent just 5 percent of the nation’s fleet, Kedzie added.

No Inappropriate Contact

Jon Toomey, a former aide to Black who is named in several of the emails, also said there wasn’t any inappropriate contact between Black’s office, Fitzgerald, and EPA officials.

“Any suggestion otherwise is meritless,” Toomey, now a lobbyist for Fitzgerald, said in a statement. Toomey left Black’s office in 2017.

Volvo has been in contact with the EPA about the glider kit issue more than any other party, Toomey added.

Critics of the glider kit requirements have pointed to Volvo's work with EPA career staff in the agency's Ann Arbor, Mich., vehicles lab to conduct emissions tests on glider trucks.

Volvo, a staunch opponent of efforts to repeal the glider limits, provided the two glider trucks the EPA tested in the fall of 2017, according to emails released to the Environmental Defense Fund and Steve Milloy, a former member of President Donald Trump's EPA transition team.

EPA air chief Bill Wehrum, however, has defended the EPA testing as independent of outside input—though he did confirm Volvo provided the glider vehicles.

'Expeditiously As Practicable'

Toomey said he is still hopeful the EPA will adopt a rule from the 2017 proposal, especially given Trump's focus on deregulation.

"[T]his Obama-era rule on glider trucks was arbitrary, punitive, and eliminated thousands of American jobs," Toomey said. "This President certainly doesn't cater to Chinese backed corporations—like Volvo Trucks."

The Chinese company Zhejiang Geely Holding Group Co. bought Volvo in 2010.

Even with Black out of office, the EPA still faces political pressure from some Republicans to give glider kit makers regulatory relief. In written questions for the record to Wheeler after his Jan. 16 confirmation hearing, Sen. Joni Ernst (R-Iowa) asked about the status of the glider repeal rule.

Harrison Truck Centers, another U.S. glider kit maker, has facilities in Iowa.

Wheeler told Ernst the EPA was still working on a solution, and though he didn't have a timeline for finishing a rule, he said the agency would move forward "as expeditiously as practicable."

'Super-Polluting' Trucks

But environmental groups are raising alarm at any effort to undercut the restrictions on glider kits.

Glider kit makers' business model is "predicated on circumventing the Clean Air Act," said Dave Cooke, a senior vehicles analyst with the Union of Concerned Scientists.

Trucks with glider kits typically install used engines that may predate the EPA's air pollution controls for heavy-duty engines. Fitzgerald, for example, advertises that the company installs "pre-emission engines" into new truck bodies "to create a more fuel efficient truck that requires less maintenance and yields less downtime."

Glider trucks are "super-polluting" and a major threat to Americans' health and safety, Martha Roberts, a senior attorney for the Environmental Defense Fund's climate and legal regulatory program, said.

“We’ll continue to defend these commonsense pollution limits,” Roberts added. “The Trump administration should be focused on protecting public health and not on playing politics.”

To contact the reporter on this story: Abby Smith in Washington at asmith@bloombergenvironment.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Renee Schoof at rschoof@bloombergenvironment.com; Rob Tricchinelli at rtricchinelli@bloombergenvironment.com

Inside EPA

EPA declines to tighten more air toxics rules

<https://insideepa.com/daily-feed/epa-declines-tighten-more-air-toxics-rules>

Posted: March 18, 2019

EPA in a combined rulemaking has left largely unchanged air toxics rules for three coating industry sectors, continuing a pattern of declining to tighten emissions limits following Clean Air Act-mandated reviews.

The agency’s latest final risk-and-technology review (RTR) rule, published in the March 15 *Federal Register*, leaves unchanged the emissions limits under national emissions standards for hazardous air pollutants (NESHAP) regulations for the surface coating of large appliances; printing, coating, and dyeing of fabrics and other textiles; and surface coating of metal furniture. The Clean Air Act requires EPA to conduct RTRs eight years after it first promulgates a NESHAP. If the agency finds remaining risks to human health, or that new and cost-effective control technology is available, or both, it can tighten the standards. The agency has fallen years behind schedule in issuing the RTR rules, and is under judicial deadlines to issue dozens of them in the next few years.

Some of those deadlines fall after the 2020 presidential election, meaning the outcome of that vote will have implications for whether a second-term Trump administration continues to leave the rules in place or a potential Democratic president’s EPA decides to tighten them.

The Trump EPA in its RTR rules has not tightened standards, and has in some cases eased some compliance requirements, such as monitoring, recordkeeping and reporting requirements.

The agency is also systematically removing regulatory exemptions for periods of startup, shutdown and malfunction from its rules in order to comply with federal court rulings finding such exemptions unlawful. The three rules follow this trend, and apply to 69 facilities combined. EPA proposed RTRs for the sectors in a Sept. 12 *Federal Register* notice, where it proposed, among other modifications, to require high-efficiency spray technology for surface coating of large appliances and coating of metal furniture in certain circumstances. EPA in the final rule does not require this, finding it unnecessary because most facilities use high-efficiency methods anyway.

The agency also took comment on whether it should ban the use of ethylene oxide (EtO) in the printing, coating, and dyeing of fabrics and other textiles sector. EPA opts not to ban use of the chemical, finding that although the only facility covered by the NESHAP discontinued its use for cost reasons, this does not represent a control technology development that should apply to all other plants.

EPA recently upgraded its risk assessment for EtO to find the carcinogenic chemical more harmful than previously thought, but has run into strong industry pushback from companies claiming EPA exaggerates the risks. The chemical is used as an industrial solvent, for example in the sterilization of medical equipment.

The final NESHAP also introduces electronic reporting requirements for the three sectors.

Budget

E&E News

Trump's budget would have a 'negative impact' --- IG

<https://www.eenews.net/greenwire/2019/03/18/stories/1060127545>

Kevin Bogardus

Posted: March 18, 2019

The EPA inspector general is taking issue with President Trump's proposed budget cut for the watchdog office.

Acting EPA IG Charles Sheehan said in a memo that Trump's fiscal 2020 budget plan would hinder his staff, who are already struggling to answer calls for more audits and investigations. Sheehan's memo was included with EPA's budget justification, which was posted online today.

"The proposed FY 2020 funding level would have a negative impact on our production capacity and our ability to respond to ever-demanding and increased workload requirements," Sheehan said in the memo, dated Feb. 8 and sent to Office of Management and Budget Director Mick Mulvaney.

"As such, I do not agree with the President's budget request, because such a proposal would substantially inhibit the OIG from fully performing its duties," he continued.

Under Trump's budget for EPA IG, the watchdog office would receive nearly \$38.9 million. Coupled with almost \$9.6 million drawn from Superfund accounts for the IG, EPA's internal watchdog would receive close to \$48.5 million overall in fiscal 2020.

That sum falls short of what the EPA IG receives in fiscal 2019 under appropriations approved by Congress, which is almost \$50.3 million in total when including Superfund monies. An IG spokeswoman said those funds were not sufficient and would put the watchdog office's work at risk (Greenwire, Feb. 15).

The EPA IG wants a bigger budget to support its work than what Congress has appropriated or Trump has requested.

Sheehan said in his memo that he requests the watchdog office's initial budget request of \$58 million be recognized. In addition, he said Trump's budget request would create "great risk" for EPA "and reduce taxpayers' return on investment."

The IG's low budget has already forced it to turn away requests for investigations.

"We had to inform congressional requesters and others that we could either not undertake their requested review, only do a portion of the requested work or try to do the requested work eventually," Sheehan said.

"These requests included projects that we believe have significant value. However, we were forced to forego [sic] them because our lack of resources resulted in a diminished capacity to adequately respond."

Asked for comment on Trump's budget request, EPA IG spokeswoman Tia Elbaum said, "Constrained budgets make it difficult for the OIG to perform all of the duties of our office, which include completing statutorily mandated and risk-based projects, such as those requested by Congress."

"The OIG will have to make difficult decisions about accepting new requests, and our ability to complete audits and investigations with return on investment commensurate to past capability will be at risk," she said.

The EPA IG has been at the forefront of investigating former Administrator Scott Pruitt, who resigned last July facing allegations that he misused his public office.

The IG still has ongoing reviews of his travel and pay raises given to Pruitt's close aides. In addition, it has closed cases with inconclusive findings related to Pruitt, including his rent of a Capitol Hill condo tied to a lobbyist with business before the agency.

The EPA IG has disagreed with the president's proposed budget cuts in the past, including last year in a memo. Overall, Trump would cut EPA's fund by nearly a third under his fiscal 2020 budget plan (Greenwire, March 11).

Water Finance & Management

White House FY20 budget proposes cuts for EPA, Army Corps

<https://waterfm.com/white-houses-fy20-budget-proposes-cuts-for-epa-army-corps/>

WFM Staff

Posted: March 18, 2019

Funding for the U.S. Environmental Protection Agency would be cut by nearly a third next year under an FY20 budget proposal released by the Trump administration last week. The spending cuts, which would reduce EPA appropriations from their FY19 level of just over \$8.8 billion to \$6.1 billion next year, would also affect the agency's State Revolving Fund (SRF) and Water Infrastructure Finance and Innovation Act (WIFIA) programs.

Under the administration's request for EPA, the agency would receive \$863 million for the Drinking Water SRF next year, \$301 million below the program's FY19 appropriation. The Clean Water SRF would suffer an even larger cut of \$574 million, leaving the program with just under \$1.12 billion next year. The WIFIA program would receive \$25 million, well below its FY19 funding of \$68 million.

Despite the cuts, the administration's budget documents attempt to put a positive spin on the proposal, explaining that in 2020, "EPA will focus resources on supporting the modernization of outdated drinking water, wastewater, and stormwater infrastructure; creating incentives for new water technologies and innovation; and funding the core requirements of the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA)." It also notes that the \$25 million request for WIFIA could be leveraged into roughly \$2 billion worth of loans to communities.

Army Corps

President Donald Trump's FY20 budget request proposes to cut the budget of the U.S. Army Corps of Engineers (USACE) by more than 30 percent. If approved, the reduction would leave USACE with just \$4.8 billion next year. USACE received about \$7 billion for FY19.

The president's request officially kicks off the FY20 budget season, but Congress is expected to largely reject the broad funding cuts to EPA and other agencies sought by the administration. President Trump proposed similarly dramatic reductions to EPA ahead of the 2018 and 2019 fiscal years — each of which Congress denied.

In recent years it has become commonplace for presidential administrations to propose significant cuts to USACE in their budget documents, as administration officials seek to contain the overall cost of their spending plans. Given the popularity of USACE and its mission on Capitol Hill, there is often an expectation that Congress will ultimately restore the funding when it gets around to enacting the spending bills for the fiscal year. For example, this year, before Congress eventually funded USACE at \$7 billion, President Trump proposed providing it with just \$4.6 billion.

The FY19 budget request also repeats previous proposals by the Trump administration to sell the Washington Aqueduct, which provides wholesale water service for the District of Columbia and parts of Northern Virginia. The budget plan argues the sale would net \$123 million for the federal government, but Congress has ignored this request when the president proposed it in previous years.

Chemicals

E&E News

Critics pounce on EPA's mercury proposal

<https://www.eenews.net/greenwire/2019/03/18/stories/1060127543>

Sean Reilly

Posted: March 18, 2019

EPA officials confronted a chorus of calls this morning to drop plans for revisiting their landmark regulation of power plant mercury pollution as speakers at a public hearing accused the agency of industry bias, flawed analysis and sheer wrongheadedness.

"Why are we killing something that is protecting us?" asked Daniela Ochoa, a Washington, D.C., member of Moms Clean Air Force, after noting that emissions of the toxic metal have plunged in recent years. Like almost all of the participants in the first round of what is likely to be an all-day hearing, Ochoa urged EPA to scrap the proposed repeal of the legal underpinning for what are formally known as the Mercury and Air Toxics Standards, or MATS.

Jillian Riley of the Massachusetts attorney general's office deemed the proposal illegal, saying EPA has no power to reverse its long-held determination that it is "appropriate and necessary" to limit emissions of mercury, arsenic and other hazardous pollutants from coal- and oil-fired power plants.

"It is immoral to harm children for the benefit of industry," said Annika Harley, a fellow at Creation Justice Ministries, which works on environmental issues with a variety of Christian denominations.

Out of the first 20 speakers, the lone supporter of the EPA plan was Cody Nett, assistant general counsel of Murray Energy Corp., the Ohio-based coal company that is closely allied with President Trump. In his testimony, Nett framed MATS as part of an Obama-era "war on coal" that had contributed to the closure of more than 400 coal-fired power plants and "jeopardized the nation's energy security."

Nett praised the Trump EPA for rejecting what he called the Obama administration's "unlawful effort to justify MATS' overreach based on so-called co-benefits." But Murray is "extremely disappointed," he added, that the agency intends to leave the actual emissions limits intact.

"Leaving MATS in place would be just as great an affront to the rule of law — if not greater — than the fuzzy math and baseless hand-waving deployed by the Obama administration to impose the rule in the first place," Nett said.

More than 140 people signed up in advance to speak at today's hearing. Moms Clean Air Force, affiliated with the Environmental Defense Fund, alone planned to have more than 30 members — some accompanied by their children — give testimony. Sen. Tom Carper (D-Del.), the ranking member on the Senate Environment and Public Works Committee, is scheduled to speak later today and also plans to join in a press conference outside the agency's headquarters.

Among the three EPA officials who oversaw the hearing's first two hours was Clint Woods, a political appointee who serves as the agency's deputy air chief.

Mercury is a neurotoxin that can harm babies' brain development. EPA issued MATS in 2012 after some states had already sought to crack down on their own. Before then, power plants were the nation's biggest single source of airborne mercury pollution. But from 2006 to 2016, those yearly emissions plunged 85 percent, from 92,000 pounds to 14,000 pounds, said Dr. Jerome Paulson, a consultant who represented the American Academy of Pediatrics.

EPA's plan "puts children's health at risk," Paulson said.

Under its proposal, unveiled in late December but published only last month, EPA is seeking to undo the "appropriate and necessary" determination on the grounds that the Obama administration erred in relying on co-benefits besides those directly targeted in the regulations to justify the expected compliance costs.

The agency has pointed to a 2015 Supreme Court ruling that left the standards in place but said that EPA should have considered compliance expenses in making the appropriate and necessary determination required under the Clean Air Act.

In 2016, EPA officials responded to the high court's ruling with a "supplemental finding" reaffirming its decision to regulate power plant emissions of mercury and other toxics partly in light of their health risks.

The Trump administration, however, now calls that analysis flawed because of its reliance on the billions of dollars' worth of co-benefits expected from the decline in particulate pollution, as opposed to a far smaller sum attributed to cuts in mercury emissions.

Almost all of the power industry now meets the standards. While EPA air chief Bill Wehrum has previously stressed that the emissions limits would remain in place under the administration's proposal, critics fear that repeal of the appropriate and necessary determination would leave the standards vulnerable to a coal industry lawsuit.

Murray Energy, for example, is already a plaintiff in a pending legal challenge to the 2016 supplemental finding. The company previously used current EPA Administrator Andrew Wheeler as a contract lobbyist while Wheeler was still working in the private sector. After EPA released its proposal in December, a Murray Energy spokesman said that the company had monitored the rulemaking, but not actively lobbied for it, "because the vast majority of our utility customers have already come into compliance" with the standards.

The Hill

Will this Congress be the one that finally acts on asbestos

<https://thehill.com/opinion/energy-environment/434459-will-this-congress-be-the-one-that-finally-acts-on-asbestos>

Raja Flores and Linda Reinstein

Posted: 5:00pm, March, 17 2019

You may think asbestos is yesterday's problem, but it is not. It's today's problem, and — if Congress fails to act — the problem will continue.

Asbestos kills nearly 40,000 Americans every year and, since it is still not banned, imports are on the rise again. In August of 2018, U.S. asbestos imports rose 2,000 percent just from the month prior.

But lawmakers are not taking action to prevent exposure to asbestos, a known carcinogen. The recent introduction of the bicameral Alan Reinstein Ban Asbestos Now Act of 2019 (ARBAN) would ban all asbestos imports and use, without loopholes or exclusions.

For years, victims and their loved ones have urged the Environmental Protection Agency (EPA) to ban this deadly toxin. We've pushed for regulatory tools like a "Right to Know" database that would require the U.S. asbestos industry to disclose details about how, when, and where any asbestos-containing products are being imported and put to use. Unfortunately, the EPA denied our Right to Know petition.

However, shortly after our filing, attorneys general from 15 states filed a petition for the EPA to release this same information.

The scientific community agrees that there is no safe level of exposure to asbestos, yet shockingly, U.S. laws place no restriction on asbestos imports and allow almost all uses of the substance. This is an embarrassing contrast with the 60 countries that have already banned asbestos and demonstrates a failure of American leadership.

Until the EPA eliminates the loophole exempting asbestos from the same reporting requirements that apply to thousands of other chemicals, the American public will remain at risk.

In light of the EPA's failure to act, the U.S. Food and Drug Administration is taking great effort to pick up the slack, independently testing products for asbestos and alerting the public. Just this month, the FDA issued a consumer warning after discovering asbestos in make-up products marketed to children and tweens at Claire's and Justice stores. However, the FDA unfortunately does not have the regulatory power to keep these products off of our shelves.

We're taking the EPA to court, and we expect to win. The facts — and the FDA — are on our side, but we need Congress to join this fight, too. That's what makes ARBAN so important. This

bill would ban products that are contaminated by asbestos — like Johnson & Johnson’s notorious but ever-popular baby powder — from being sold to unsuspecting consumers.

In addition to banning asbestos imports and usage, the bill would also take a big step forward in helping the public understand and reduce the risks of “legacy” asbestos present in our homes, schools and businesses. Despite the millions of tons of asbestos that are part of our built environment across the country, no comprehensive risk assessment has taken place in over 35 years. Knowing where asbestos is located is critical to keeping people safe from unnecessary or accidental exposure.

Despite decades of irrefutable evidence of the dangers of asbestos, action to protect the public from asbestos-related lung cancer, mesothelioma and other deadly diseases has been weak and slow. Inadequate regulatory laws riddled with loopholes prevented the EPA from taking action, even when they did try to enact a ban in 1989.

However, that changed in 2016, when a bipartisan congressional effort bolstered the EPA’s ability to regulate chemicals. They recognized that if the EPA could not ban a substance as hazardous as asbestos, its hands would be tied for all other unsafe chemicals.

We welcomed the new law and were encouraged when asbestos was selected as one of its top 10 chemicals for review and regulation. However, we didn’t count on the Trump administration.

Trump’s EPA — which seemingly seeks to protect industry profits rather than the American people — has weakened and narrowed its evaluation of asbestos risks in an effort to minimize the scope and impact of any potential regulation.

It is egregious that the EPA has been able to get away with this. The EPA has abdicated its responsibility time and again where asbestos is concerned. Congress must step in. The bipartisan coalition in Congress that strengthened TSCA should not accept the EPA’s willful failure to take meaningful action on asbestos. Congress can finally do something to end this man-made disaster. They can pass ARBAN. They can provide real oversight to the EPA to help them do their job. They can protect us all from deadly asbestos once and for all.

Dr. Raja Flores is a recognized leader in the field of thoracic surgery for his pioneering efforts in the treatment of mesothelioma.

Linda Reinstein is the president and chief executive of the Asbestos Disease Awareness Organization, which seeks to eliminate asbestos-caused diseases and protect the rights of asbestos victims.

Medical Press

EPA proposal will allow antibiotic spraying of citrus crops

<https://medicalxpress.com/news/2019-03-epa-antibiotic-citrus-crops.html>

Posted: March 18, 2019

(HealthDay)—The U.S. Environmental Protection Agency proposal to allow use of the antibiotic streptomycin to treat citrus disease should be withdrawn because it poses a risk to human health and the environment, *Consumer Reports* says.

The move would lead to "a 26-fold increase in the use of streptomycin in plant agriculture and could trigger antibiotic resistance that would reduce the drug's effectiveness in treating diseases in people," the consumer group warned in a news release.

"This misguided proposal would allow a massive increase in the use of streptomycin—far greater than its use in human medicine," Michael Hansen, Ph.D., senior staff scientist at Consumer Reports, said in the news release. "The EPA has failed to adequately investigate the risks associated with this proposal, which would undermine current government efforts to preserve the effectiveness of antibiotics. We urge the EPA to withdraw this proposal."

The EPA proposal would allow streptomycin to be sprayed on all citrus trees in the United States up to three times a year. Based on current commercial citrus acreage, the amount allowed to be sprayed would total more than 942,000 lb, according to *Consumer Reports*. The group noted that other federal agencies have taken steps to reduce overuse of antibiotics in agriculture and human medicine.

National Memo

EPA Will Weaken Restrictions On Lethal Methylene Chloride

<https://www.nationalmemo.com/epa-will-weaken-restrictions-on-lethal-methylene-chloride/>

Emily Singer

Posted: 10:27pm, March 17, 2019

Methylene chloride — a toxic chemical found in a wide variety of paint strippers and adhesives — has killed at least 64 people since 1980.

Yet days ago, Trump's Environmental Protection Agency weakened a ban on the chemical that former President Barack Obama's administration proposed one day before his last term expired — creating a loophole so that commercial contractors can still use products containing the deadly substance.

Of course, in a news release announcing the weakened regulation, the EPA didn't exactly draw attention to this loophole. In fact, the release — titled "EPA Bans Consumer Sales of Methylene Chloride Paint Removers, Protecting Public" — gave the impression that the Trump administration was banning the substance altogether.

"After analyzing the health impacts and listening to affected families, EPA is taking action to stop the use of this chemical in paint removers intended for consumers," EPA administrator Andrew Wheeler said in the release. "Today's decision reflects EPA's commitment to ensure that chemicals in the retail marketplace are safe for the American public."

Yet Wheeler did not let on that the new ban is weaker than the ban Obama's EPA proposed.

For now, the chemical will be available for use for contractors while the EPA takes public comments on whether contractors should also be banned from using the substance.

Families of people who died from the chemical are outraged over the EPA's decision to implement a weaker ban on the chemical.

They include Wendy Hartley, whose 21-year-old son Kevin died from the chemical in 2017 while finishing bathtubs for his family business. Hartley filed a lawsuit in January against the government for having failed to ban the substance.

"I am deeply disappointed that the EPA has decided to weaken its proposed ban on methylene chloride," Hartley said in a statement to the *WashingtonPost*. "Getting this deadly chemical out of consumers' hands is a step in the right direction — a step that was started by retailers nationwide. Workers who use methylene chloride will now be left unprotected and at risk of health issues or death. I will continue my fight until the EPA does its job."

But given recent history, it's hardly shocking that Trump's EPA would green-light the sale of toxic chemicals.

It has, after all, weakened a ban on cancer-causing asbestos, contemplated allowing minors to handle pesticides that cause brain damage and cancer, and has refused to set limits on the levels of toxic chemicals in drinking water.

Allowing workers to continue handling a chemical that has caused dozens of deaths is simply par for the course for Trump's EPA.

Published with permission of The American Independent.

IMAGE: EPA administrator Andrew Wheeler.

The New York Times

E.P.A., Scaling Back Proposed Ban, Plans Limits on Deadly Chemical in Paint Strippers

<https://www.nytimes.com/2019/03/15/climate/epa-paint-stripper-methylene-chloride.html>

Lisa Friedman

Posted: March 15, 2019

WASHINGTON — The Environmental Protection Agency announced on Friday new limits on a lethal chemical found in paint stripping products that has been linked to more than 50 deaths since the 1980s.

Chemical safety activists called the plan a significant scaling-back of the ban that the Obama administration had proposed. In 2017 the Obama administration concluded the chemical, methylene chloride, represented an "unreasonable risk" and moved to ban it from commercial as well as consumer use.

Andrew Wheeler, the E.P.A. administrator, on Friday signed a rule that prohibits the manufacture and use of consumer products containing methylene chloride, but did not ban it for commercial use. The agency is also considering a proposal for a certification and training program for workers who use the chemical commercially.

"Families have lost loved ones in tragic and heartbreaking circumstances," said Alexandra Dunn, the E.P.A. assistant administrator for chemical safety. "We answered the call for many affected families to ensure that no other family experience the death of someone close to them from this chemical."

ADVERTISEMENT

Stores will have 180 days to stop selling products containing methylene chloride. After that, violators will face fines or possible imprisonment.

Ms. Dunn said the E.P.A. expected retailers to comply "much more quickly." So far, at least 13 retailers have announced that they have removed or will remove from their shelves paint stripping products that contain the chemical.

Relatives of three men who died from exposure after working with paint strippers containing methylene chloride met in early 2018 with Scott Pruitt, then the administrator of the E.P.A. Among them was Brian Wynne, the brother of Drew Wynne, who died in 2017 after stripping paint from the floor of his coffee company in Charleston, S.C.

Another was Wendy Hartley of Nashville, Tenn., whose son Kevin died at age 21 after refinishing a bathtub for the family's business. Ms. Hartley said on Friday that she had declined to meet with E.P.A. officials ahead of the agency's announcement because the ruling does not ban the chemical outright.

"I am deeply disappointed that the E.P.A. has watered down the ban on methylene chloride as it was originally proposed," she said in a text message. "Workers like my son Kevin who use MC are left unprotected."

Clean-Up

CBS Los Angeles

Investigation Continues Into Gas Tanker Explosion As EPA Wraps Up Clean-Up Effort

<https://losangeles.cbslocal.com/2019/03/18/gas-tanker-explosion-epa-cleanup/>

Posted: 5:57 am, March 18, 2019

LOS ANGELES (CBSLA) — The investigation into gas tanker explosion next to South LA homes continues Monday as the EPA wraps up its cleanup of the area.

The explosion caused a large fire in the 200 block of West Slauson Avenue in the unincorporated area of Florence before 8 a.m. Sunday, sending up a plume of black smoke visible across much of the Los Angeles. Two women were injured, one severely – she suffered second and third degree burns to 30 percent of her body.

The home closest to the blast was red-tagged. About 30 residents were told to stay out of the area were placed in hotels by the Red Cross.

The Environmental Protection Agency worked around the clock to clean up the neighborhood, which still smelled like gas and was considered a fire hazard almost 24 hours later.

"Overnight the landowner was directed by EPA to clean up the site, so they hired a contractor and they have pumped out the fire-damaged tanker that was the source of this whole mess. And

what was pumped into a storage tank will remain until we can dispose of it,” Robert Wise with the EPA said. “And they have also picked up some of the free liquid on the property. We’re hoping when we get back out here later this morning, we will get the rest of that liquid out.”

Wise said the EPA plans to have Slauson cleared by 6 a.m., but that the agency will return to the neighborhood at 9 a.m.

LA City Fire and the LAPD continue to investigate the cause of the explosion and why the 9,000-gallon tanker was so close to homes.

Climate

Fox News

Former EPA advisor tells French President Macron to follow Trump's lead, 'shred' Paris climate agreement

<https://www.foxnews.com/world/former-epa-advisor-to-french-president-macron-shred-paris-climate-agreement>

Victor Garcia

Posted: 1:15pm, March 18, 2019

A former Environmental Protection Agency advisor has told French President Emmanuel Macron to "shred" the Paris agreement and turn to President Trump to embolden their economy in the wake of fresh riots over the country's environmental policy.

“My message to the French leadership is they should shred the Paris agreement and they should work with President Trump to figure out how to grow the economy in historic ways while advancing successful environmental progress,” Mandy Gunasekara, former deputy assistant administrator at the EPA, said on “America’s Newsroom” Monday.

France’s prime minister promised to announce new measures to avoid a repeat of Saturday’s violence, in which rioters set fires, ransacked luxury stores and attacked police around the Champs-Élysées.

FRENCH PRESIDENT MACRON CONSIDERING BANNING DEMONSTRATIONS ON CHAMPS ÉLYSEES AMID RENEWED VIOLENT PROTESTS

The yellow vest movement demanding economic justice had been dwindling before taking off again last weekend.

Protesters had tried to raise their profile Saturday to mark the end of a national debate Macron had organized to respond to protesters’ concerns about sinking living standards, stagnant wages, and high unemployment.

Many demonstrators, especially from the political extremes, feel the debate didn’t address their real demands.

President Trump commented on the protests and the United States' environmental success on Twitter over the weekend.,

EMMANUEL MACRON URGES EUROPE TO REJECT NATIONALISM AHEAD OF EU ELECTIONS, CALLS FOR 'RETHINK' ON MIGRATION

"How is the Paris Environmental Accord working out for France? After 18 weeks of rioting by the Yellow Vest Protesters, I guess not so well! In the meantime, the United States has gone to the top of all lists on the Environment," Trump tweeted.

Gunasekara, who worked closely with President Trump when the U.S. left the Paris Climate Accord stressed that "those types of agreements don't really work."

CLICK HERE TO GET THE FOX NEWS APP

"This is what could have happened here if we stayed in the Paris agreement and the problem is that their political leaders... they are undermining their economic interest in the name of environmental progress," Gunasekara said. "The problem is they aren't even achieving environmental progress."

The Associated Press contributed to this report.

The New Republic

Would the Green New Deal Survive the Supreme Court

<https://newrepublic.com/article/153334/green-new-deal-survive-supreme-court>

Matt Ford

Posted: March 18, 2019

How the United States confronts climate change will be decided whenever the Democratic Party regains control of the White House and Congress. But it may ultimately be Chief Justice John Roberts who decides whether they succeed.

Every major Democratic policy would need to survive scrutiny by the justices. So how would the Green New Deal fare if it reaches the high court? This isn't an easy question to answer, partly because lawmakers have yet to draft a proposal. Early last month, Representative Alexandria Ocasio-Cortez introduced a resolution recognizing "the duty of the Federal Government to create a Green New Deal"; 90 House Democrats have cosponsored it, and multiple Democratic presidential candidates have expressed support for it. But the resolution lacks the specificity of a bill. In fewer than 2,000 words, it outlines the Green New Deal's goals, which include not only net-zero greenhouse gas emissions and renewable-energy investment but a job guarantee, universal healthcare, and more.

While the resolution does not describe in detail how the government could achieve these goals, left-wing policy wonks have been working to fill in the gaps. Data for Progress, a progressive think tank with close ties to Ocasio-Cortez, released its own proposal for a Green New Deal last September. It provides a road map for what a legislative package could look like if Democrats win unified control in Washington—and

thus serves as a useful guide for what the courts would have to wrestle with, once conservatives mount the inevitable legal challenges.

One of the Green New Deal's key components is a familiar one: implementing the Clean Power Plan. The Obama administration unveiled the plan in 2014 to stave off a two-degree Celsius rise in global temperatures over the next century, which scientists warn would have a catastrophic impact on civilization. The plan called for drastically curbing greenhouse-gas emissions from power plants, namely those powered by coal, and was meant to persuade other countries to put forth their own plans ahead of the Paris climate summit later that year.

The plan was soon challenged in court, and in 2016 the Supreme Court blocked it from going into effect until the legal questions were resolved. Justice Antonin Scalia's death a few days later effectively tied the plan's long-term fate to the outcome of the presidential election later that year. After Donald Trump took office, his first EPA administrator, Scott Pruitt, began the process of repealing the Clean Power Plan. The agency's proposed replacement, unveiled last August, would shift much of the discretion to regulate coal-plant emissions to the states. (The legal challenges to the plan are on hold until the replacement process is complete.) Data for Progress's proposal would revive the plan, as well the legal challenges to it.

The think tank's Green New Deal draws from other policy ideas developed under the Obama administration. Their paper recommends that the government "fully enforce the strengthened National Ambient Air Quality Standards Act of 2015"; that it "strengthen and enforce Obama-era rules on methane leakage"; that it "reinstate and implement the Obama-era 'Clean Water Rule' to limit pollution in a variety of streams, tributaries, and wetlands." Conservative critics have warned that the Green New Deal would turn America into Cuba or Venezuela, but the end goal looks more like what the EPA was already doing before Trump took over.

[Get the latest from TNR. Sign up for the newsletter.](#)

The Roberts Court isn't completely hostile to efforts to combat climate change, as environmentalists have won some key victories there over the past decade. During the George W. Bush administration, top EPA officials claimed they didn't have the authority to regulate greenhouse gases as pollutants under the Clean Air Act. A coalition of states and environmental groups challenged that finding in federal courts. In the landmark 2007 case *Massachusetts v. EPA*, the Supreme Court ruled that greenhouse gases fell under the act's broad definition of "air pollutants," and that lawsuits against the EPA could go forward if the agency refused to regulate them. The justices later signed off on the Obama EPA's first effort to regulate greenhouse gas emissions under the Clean Air Act.

Justice Anthony Kennedy, the court's swing vote from 2005 to 2018, sided with the majority in both cases. But the rest of the court's conservatives generally resisted those rulings. In *Massachusetts v. EPA*, Roberts questioned whether the states had standing to bring the case at all, arguing that Massachusetts' claimed injury—the loss of coastal land from rising sea levels—couldn't be directly tied to the EPA's actions. And in the 2014 case, justices Samuel Alito and Clarence Thomas challenged the court's earlier determination that the Clean Air Act authorized the EPA to regulate greenhouse gases at all.

Brett Kavanaugh's confirmation to replace Kennedy last year raises the peril. Before joining the high court, Kavanaugh spent twelve years on the D.C. Circuit Court of Appeals, where he weighed in on multiple high-profile cases involving the EPA. In a survey of those decisions last year, *The Atlantic's* Robinson Meyer found that the newest justice occasionally sided with the agency on major environmental cases. But Kavanaugh also often resisted the EPA's efforts to break new regulatory ground when it came to curbing carbon emissions to fight climate change.

In 2014, for example, Kavanaugh served on a three-judge panel that heard *White Stallion Energy Center v. EPA*. The case centered on a slate of EPA regulations targeting mercury emissions at power plants. In a 2-1 decision, the panel sided with the agency after energy companies sued to block the rules. Kavanaugh, however, wrote a partial dissent where he argued that the EPA should have taken the costs of the companies' compliance into the account when making its regulatory decisions. When the case—later retitled *Michigan v. EPA*—reached the Supreme Court, Scalia led the court's conservative bloc to adopt Kavanaugh's position.

Kavanaugh also appears set to take part in a mini-revolution on the court that could have far-reaching effects. Most of the EPA's regulatory power comes from its interpretation of broad statutes like the Clean Air Act and the Clean Water Act. When federal courts interpret how agencies implement acts of Congress, they typically use what's known as Chevron deference, so named for a 1980s case involving the oil giant. Generally speaking, the Chevron doctrine instructs judges to defer to a federal agency's interpretation of federal law when deciding whether the agency is exceeding its authority under that law.

Over the past 30 years, Chevron deference evolved into a pillar of federal administrative law. It's also recently become a target of ire among conservative legal scholars, who partially blame it for expanding the federal government's regulatory powers. Justice Neil Gorsuch, a frequent critic of the doctrine, tilted the court's balance on the subject when he replaced Scalia, who generally accepted it. Kavanaugh does not go quite as far as Gorsuch in his critiques, but his rulings and academic writings strongly suggest he'd vote to narrow the doctrine if given the opportunity. That could constrain Green New Deal-related regulations if the justices read the legislation more narrowly than the EPA staff does.

The Supreme Court has a spotty track record on upholding major legislation. The Court gutted Reconstruction-era laws to suppress Southern violence in the late nineteenth century, struck down key portions of the New Deal in the 1930s, and barely thwarted two major challenges to the Affordable Care Act during the Obama administration. With a conservative majority on the Court now all but guaranteed for the next 20 years, Democrats increasingly see the Roberts Court as a foe to be conquered rather than a Court to be persuaded.

Roberts's vote to save the ACA's individual mandate in 2012 is a touchstone for liberals who hope he may stave off the conservative bloc's most sweeping decisions in the decades to come. The post-Kennedy court is still in its infancy, so it's not yet clear whether Roberts is trending in that direction. But he may yet be called upon to do it again—this time with global stakes at hand.

Deference

Inside EPA

High court urged to reject push for preserving narrow EPA deference

<https://insideepa.com/daily-feed/high-court-urged-reject-push-preserving-narrow-epa-deference>

Posted: March 18, 2019

A Marine Corps veteran asking the Supreme Court to scrap its practice of deferring to EPA and other agencies on their regulatory interpretations says the justices should reject the Trump administration's push for a scaled-back deference doctrine, arguing such an outcome would have “bizarre, if not destructive” consequences.

The veteran's March 14 brief in *Kisor v. Wilkie* pushes back against the Department of Justice's (DOJ) bid to preserve a limited form of the *Auer* deference doctrine that gives legal weight to

agencies' interpretations of ambiguities in their own rules, as long as those interpretations are "reasonable."

"The government's new position is preferable to existing *Auer* deference. But the most sound outcome, both legally and practically, is to overturn *Auer*," reads the response brief for petitioner James L. Kisor.

Kisor is asking the court to overturn the Department of Veterans Affairs' reading of its rules that govern medical benefits for his post-traumatic stress disorder, but the case provides an opening in the long-standing push by critics of broad agency authority, including conservatives on the Supreme Court, to narrow judicial deference to those agencies. The case does not affect EPA directly but its outcome could be significant for the agency.

If the petitioner prevails, EPA would have a tougher time winning cases that turn on the meaning of its rules, including when it acts based on regulatory guidance. Judges would instead be free to reject EPA's interpretations on the scope of Clean Water Act jurisdiction, Clean Air Act permitting requirements and many more subjects.

In its merits brief for the case, DOJ instead floated narrowing *Auer*, by restricting deference to situations where "the interpretation was issued with fair notice to regulated parties; is not inconsistent with the agency's prior views; rests on the agency's expertise; and represents the agency's considered view, as distinct from the views of mere field officials or other low-level employees."

But Kisor's new filing says those limits are unworkable, in part because it "would accord the agency's first interpretation binding deference, but not subsequent ones," creating "a race-to-interpret, where the first administration to construe a regulation would claim privileged legal status. That would be a bizarre, if not destructive, rule."

Further, the brief says there are no clear standards for when a new interpretation would meet DOJ's preferred test, because the government provides no clear definition of what constitutes "fair notice," or what constitutes an "ambiguous" rule. "Because there is no objective measure, parties and courts would be left adrift as to how much ambiguity triggers deference."

Rather, it continues, the high court should revert to the earlier standard known as *Skidmore*, which treats agencies' regulatory interpretations as persuasive authority rather than giving them legal weight.

"*Skidmore* addresses the same factors that the government now identifies. It considers whether 'the agency has applied its position with consistency' and the agency's 'formality' of procedure and 'relative expertness' . . . But *Skidmore* differs in one fundamental respect. *Auer* (including the government's diminished form) is binding deference. *Skidmore*, however, reflects an agency's 'power to persuade,' not its power to 'control,'" Kisor says.

Fuel

Irrigation & Green Industry

EPA proposes regulatory changes involving E15 fuel

<https://igin.com/article-7241-EPA-proposes-regulatory-changes-involving-E15-fuel.html>

Kristin Smith-Ely

Posted: 1:35am, March 18, 2019

The U.S. Environmental Protection Agency has proposed regulatory changes to allow gasoline blended with up to 15 percent ethanol (E15) to take advantage of the 1-psi Reid Vapor Pressure (RVP) waiver for the summer months that has historically been applied only to E10.

EPA is also proposing regulatory changes to modify elements of the renewable identification number compliance system under the Renewable Fuel Standard program to enhance transparency in the market and deter price manipulation.

“Consistent with President Trump’s direction, EPA is working to propose and finalize these changes by the summer driving season,” says Administrator Andrew Wheeler. “We will be holding a public hearing at the end of this month to gather important feedback.”

Under the proposed expansion, E15 would be allowed to be sold year-round without additional RVP control, rather than just eight months of the year.

Proposed reforms to RIN markets include:

- Prohibiting certain parties from being able to purchase separated RINs;
- Requiring public disclosure when RIN holdings exceed specified thresholds;
- Limiting the length of time a non-obligated party can hold RINs; and
- Increasing the compliance frequency of the program from once annually to quarterly.

EPA welcomes public comment on the proposal and intends to hold a public hearing on March 29.

Additional details on the comment period and public hearing will be available shortly.

On October 11, President Trump directed the EPA to initiate a rulemaking to expand waivers for E15 and increase the transparency in the RIN market.

For more information on the proposed rulemaking, please visit: www.epa.gov/renewable-fuel-standard-program/notice-proposed-rulemaking-modifications-fuel-regulations-provide

MATs Hearing

Bloomberg Environment

EPA Effort to Undo Mercury Limits Challenged at Hearing

<https://news.bloombergenvironment.com/environment-and-energy/epa-effort-to-undo-mercury-limits-challenged-at-hearing-1>

Amena Saiyid

Posted: 1:48pm, March 18, 2019

- Most at hearing oppose EPA proposal to revise basis for limits
- Murray Energy supports undoing Obama-era mercury and air toxics standards rule

The EPA can't undo the basis for regulating toxic mercury from power plants unless it can prove pollution from these facilities doesn't harm human health or the environment, a Massachusetts official said at a March 18 hearing.

The Obama administration issued rules in 2012 regulating mercury emissions and other air toxics from power plants, but the Environmental Protection Agency is now proposing to revise the basis for the limits.

"The EPA has failed to demonstrate that it poses no risk to public health and environment," Jillian Riley, the Massachusetts assistant attorney general for environmental protection, said at a public hearing on the rulemaking.

The EPA hasn't tried to establish that the power sector poses no risk. Instead, it's relying on outdated science and a 2011 regulatory impact analysis to claim that the compliance costs outweigh the benefits of the regulation, Riley told reporters after her testimony.

Maintain MATS

The agency wants to maintain the mercury and air toxics standards, or MATS, that nearly all coal-fired power plants have already met, even though it says the costs of the 2012 regulation don't justify the direct monetary benefits.

However, the agency also is seeking comment on whether to repeal the 2012 standards now that the cost-benefit basis is no longer applicable. Murray Energy Corp., the nation's largest underground coal mining company, wants the standards repealed.

Riley said the EPA would no longer factor co-benefits of reducing airborne particle pollution into its proposal, instead only calculating the benefits of cutting mercury pollution, Riley said.

Paul Miller, executive director for the Northeast States for Coordinated Air Use Management, or NESCAUM, said the new analysis was "seriously flawed" because the EPA assigns zero value to virtually all public health and environmental benefits associated with the rule, he told the EPA at the hearing.

The EPA also simply restated the projected compliance costs from its regulatory analysis in 2011, and did not include new information that showed the costs to be less than a quarter of the original projection, based on the industry's compliance with the 2012 standards, Miller said.

The EPA proposal estimated the power industry spent between \$7.4 billion and \$9.6 billion to comply with the 2012 standards, but said the direct benefits of reducing mercury only amounted to between \$4 million and \$6 million.

The EPA's analysis found that no new advances in pollution controls justify the cost of further reducing mercury and other toxic pollutants.

Coal-fired power plants are the largest U.S. source of mercury. The metal is converted into a neurotoxin that can lower IQ, cause motor function deficits, damage the nervous system, and lead to heart attacks.

Murray Energy Support

Murray Energy said it was “very disappointed” that the EPA was maintaining the standards after acknowledging the cost didn’t justify the benefits, a company official said.

“We urge the EPA to take the only reasonable action flowing from its repudiation of the legal basis for MATS, and rescind the rule immediately,” Cody Nett, the company’s assistant general counsel, told the agency.

Nett acknowledged that some utilities may be too late to recoup the capital costs spent to comply, but “rescission is nevertheless essential to limit future power plant retirements and to eliminate a legally invalid disincentive to construction of new plants.”

A bipartisan group of senators led by Tom Carper (D-Del.) and Lamar Alexander (R-Tenn.) also joined the chorus calling on the EPA to withdraw its proposal.

“We strongly oppose any action that could lead to the undoing of the Mercury Rule (the Mercury and Air Toxics Standards Rule),” the senators wrote in a March 18 [letter](#) to EPA Administrator Andrew Wheeler. Sens. Susan Collins (R-Maine), Joe Manchin (D-W.Va.), Thom Tillis (R-N.C.), and Sherrod Brown (D-Ohio) also signed the letter.

Meanwhile, dozens of representatives for public health and environmental groups urged the EPA at the hearing to maintain the basis for power plant limits.

Diana Van Vleet, media advocacy director for the American Lung Association’s Healthy Air Campaign, said the 2012 limits are “a shining example of success” at reducing toxic air pollutants and protecting public health.

The agency estimates mercury pollution from power plants fell 81.7 percent between 2011 and 2017 to 10,517 pounds, mainly due to the limits imposed in 2012.

“So this is not a case of ‘If it aint’ broke don’t fix it.’ This is more like a ‘if it is finally working why would you kill it’ kind of case,” said Daniela Ochoa, who came with her daughter Maya to testify against the proposal on behalf of Ecomadres, a collaborative between Moms Clean Air Force and Green Latinos.

(Updates with additional reporting throughout beginning in the eighth paragraph.)

To contact the reporter on this story: Amena H. Saiyid in Washington at asaiyid@bloombergenvironment.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Susan Bruninga at sbruninga@bloombergenvironment.com; Renee Schoof at rschoof@bloombergenvironment.com

Public News Service

Groups Testify Against EPA Rollback of Mercury Regulations

<https://www.publicnewsservice.org/2019-03-18/toxics/groups-testify-against-epa-rollback-of-mercury-regulations/a65861-1>

Trimmel Gomes

Posted: March 18, 2019

<image001.gif><image002.gif><image001.gif><image004.png><image004.png><image004.png>
RICHMOND, Va. — Environmental groups plan to speak out against the Trump administration's rollback of regulations that have cut mercury emissions at coal-fired power plants by 85 percent in the last decade.

The Environmental Protection Agency's daylong public hearing tackles proposed changes to an Obama administration rule, known as the Mercury and Air Toxics Standards. Utility companies say the rule has cost them \$18 billion so far to reduce emissions from coal-plant smokestacks.

Despite those cleanup efforts, Shenandoah Riverkeeper Mark Frondorf said more work is necessary at chemical plants like the former DuPont facility - now known as Invista - in Waynesboro, which stopped its mercury contamination in the 1950s.

"Sixty-nine years later, we still have fish consumption advisories in the Shenandoah River, we have fish consumption advisories in the South River, and it's impacted the environment," Frondorf said.

The Trump administration argues it is "providing regulatory certainty" by accurately estimating the costs of the rule. Frondorf will testify against the rule changes during today's public hearing at EPA headquarters in Washington. The hearing will run from 8 a.m. to 6 p.m.

Mercury causes brain damage, learning disabilities and other birth defects in children, among other problems. Frondorf said the mercury levels are so high in the South River, government officials have issued warnings saying no fish, with the exception of trout, should be consumed from the river.

"If you have an 8-year-old boy that you want to take fishing, are you really going to take them to the South River and let him eat trout, or let her eat trout, just because they say they're the only fish safe to eat?" Frondorf questioned. "So, it's also impacted not just the environment, but also the economy of that area down there."

Frondorf added changing the Mercury and Air Toxics Standards now would also affect all the plants that have already invested in upgrades over the years to reduce their pollution output.

The Washington Post

The Energy 202: EPA struggles for public victory with new toxic chemical protection

https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2019/03/18/the-energy-202-epa-struggles-for-public-victory-with-new-toxic-chemical-protection/5c8e9c3c1b326b0f7f38f1ac/?noredirect=on&utm_term=.3aa3f1307c49

Dino Grandoni

Posted: 8:14am, March 18, 2019

It was a rare step for the Environmental Protection Agency under President Trump: The EPA decided to create a new public health protection, when so far it has focused on loosening or outright eliminating rules seen as bad for business.

But any credit from environmentalists the EPA might have been seeking for its partial ban on the use of a deadly paint-stripping chemical was quickly blunted by criticism from by families of those killed by it -- and public health advocates who say the EPA did not go far enough.

The outcry highlights the growing gulf between the Trump administration and major environmental groups after more than two years of rollbacks of dozens of environmental rules. Even as Trump's EPA opted to create more regulation -- over objections from chemical manufacturers -- environmentalists and Democratic allies are still not satisfied with its strategy.

The EPA restricted the use of paint strippers containing methylene chloride by regular consumers after dozen of deaths have been linked to the toxic chemical. But the agency stopped short of a total ban, as The Post's Juliet Eilperin and Brady Dennis [report](#).

That means that while do-it-yourselfers will no longer be able to use the paint strippers, commercial painters can as long as they are trained to do so. The agency is seeking public input in creating a certification program.

The problem with that plan for public health advocates is that the victims include professional workers like Kevin Hartley, a 21-year-old who died while refinishing a bathtub despite being trained to use the stripper, according to his mother, Wendy Hartley.

Wendy Hartley were once "[cautiously optimistic](#)" about a full ban on the chemical after meeting last year with Trump's top environmental minister at the time, Scott Pruitt. But now a year later, she says she is "deeply disappointed" with the EPA's decision.

"Workers who use methylene chloride will now be left unprotected and at risk of health issues or death," Hartley said in a statement. "I will continue my fight until the EPA does its job."

But the brother of another victim, Drew Wynne, who died while using a paint stripper on the floor of his North Charleston, S.C. coffee company, still described the decision has a victory.

"You take a win when you can get a win," Brian Wynne told The Post. "And in this climate, a win is almost impossible."

Last year, Pruitt had [signaled](#) the EPA would follow through on an Barack Obama-era proposal to ban paint strippers containing a toxic chemical. Sen. Thomas R. Carper (D-Del.) said his office was "assured in writing would be a ban that protected both consumer users and workers from this deadly chemical."

Now Carper, along with a senator who co-wrote the chemical safety law the EPA used to limit use of the chemical, Tom Udall (D-N.M.), are criticizing the agency for not following through.

"EPA's action today is a watered-down protection that apparently values industry profits at the expense of public health and safety — particularly for the hard-working people who will still be risking their lives with exposure to these deadly products," Udall said.

Perhaps anticipating the backlash, the EPA did leave the door open for a further ban on the commercial use of products containing methylene chloride.

Alexandra Dunn, assistant administrator of the EPA's Office of Chemical Safety and Pollution Prevention, told reporters that "if the agency decides the chemical cannot be used safely in commercial operations, it could determine that it also poses an unreasonable risk to public health," Eilperin and Brady write.

Feedstuffs

EPA's RFS waivers cut corn demand by 900m bu.

<https://www.feedstuffs.com/news/epas-rfs-waivers-cut-corn-demand-900m-bu>

Jacqui Fatka

Posted: March 18, 2019

The Environmental Protection Agency revealed five more small refinery exemptions from the federal mandates of the Renewable Fuel Standard (RFS).

The approval of five additional small refinery exemptions to the 2017 RFS volumes brings the total loss of demand to 2.6 billion gal. for the 2016-17 compliance years. According to EPA, 1.82 billion renewable identification numbers (RINs) have been exempted from the 2017 RFS compliance year. That's the equivalent of more than 900 million bu. of lost corn grind demand, according to the Iowa Corn Growers Assn.

Under the RFS, refineries producing transportation fuel must demonstrate each year that they have blended certain volumes of renewable fuel into gasoline or diesel fuel or acquired credits from others as RINs, representing all of part of those volume obligations. The RFS allows certain "small" refineries – those with a throughput of fewer than 75,000 barrels per day – to petition EPA for a temporary extension of an exemption from the renewable fuel volume requirements for a given year if they can show that compliance would impose a "disproportionate economic impact" on them. EPA is required to consult with the U.S. Department of Energy to determine whether to grant an exemption.

"EPA's decision to grant five more small refinery exemptions is a slap in the face to rural communities, where farmers have lost a key market for their crops and biofuel plants have shut down or idled production," Growth Energy chief executive officer Emily Skor said. "EPA continues to hand out exemptions to unidentified refiners, which only strengthens our serious concern that EPA continues to enrich some of the most profitable oil refineries in the world -- all in secret."

The National Biodiesel Board (NBB) also condemned the small refinery exemptions. "The 2017 volumes for biomass-based diesel were set at 2 billion gal., well below the industry's proven ability to produce fuels. Now, the retroactive small refinery exemptions for 2017 have cut the obligation by a total of 240 million gal., or 12%. Because they're retroactive exemptions, the reduced demand for biomass-based diesel will hit our industry throughout 2019," NBB vice president of federal affairs Kurt Kovarik said.

The five new small refinery exemptions reduced the 2017 renewable volume obligation (RVO) for biomass-based diesel and biodiesel by an additional 48 million gal. Previously granted exemptions had reduced the 2017 RVO by 192 million gal. EPA's small refinery exemptions for 2015, 2016 and 2017 have now reduced biomass-based diesel demand by more than 360 million gal.

EPA also noted that two more petitions have been received for 2018 exemptions, bringing the total to 39, the Renewable Fuels Assn. (RFA) said in a statement.

Data released by the Energy Information Administration (EIA) revealed the extensive damage to 2018 ethanol demand that resulted from EPA's small refinery exemptions. Under the direction of former EPA Administrator Scott Pruitt, 48 refiners were excused from their legal blending obligations under the RFS, resulting in a flood of RINs into the market and a subsequent collapse in RIN prices.

RFA detailed that the wave of surplus RINs reduced the incentive to expand ethanol blending beyond the so-called E10 "blend wall," while low RIN prices pressured ethanol values and margins throughout 2018.

According to the RFA analysis of the new EIA data, U.S. ethanol consumption declined to 14.38 billion gal. in 2018 from 14.49 billion gal. in 2017. Based on the EIA forecast in January 2018 (i.e., before the market became aware of small refinery exemptions), U.S. ethanol consumption was expected to reach 14.66 billion gal. -- 276 million gal. more than what actually occurred.

In addition, the U.S. ethanol blend rate fell to 10.07% in 2018 from 10.13% in 2017. The blend rate began to drop in February 2018 as rumors and press reports regarding small refinery exemptions made their way into the market. This was far below expectations at the start of 2018, when EIA had forecasted an implied ethanol blend rate of 10.26% for 2018. For the February-to-December period, the blend rate averaged just 10.01%.

RFA president and CEO Geoff Cooper stated, "As expected, EIA's latest data confirms that small refiner exemptions caused both the ethanol blend rate and the total ethanol volume consumed to drop in 2018. This was the first year-over-year decline in U.S. ethanol consumption since 1998, breaking a 20-year trend of annual increases in domestic ethanol demand."

Cooper added, "The RFS was created to preserve the environment, protect America's energy security and give Americans more affordable options at the pump. These exemptions undercut those goals, and today's exemptions mean more than 2.6 billion gal. of RFS blending obligations have been erased with the stroke of EPA's pen. RFA will continue to fight these exemptions through the courts and urge EPA to adopt a more judicious and restrained decision-making process on refiner exemptions as well as restore lost volume obligations from previous years."

In 2018, Growth Energy and allied organizations filed a lawsuit in the D.C. Circuit Court of Appeals and a related administrative petition with EPA on the misuse of small refiner exemptions.

Additionally, Growth Energy and RFA filed another lawsuit in federal district court in August 2018 alleging that EPA and the U.S. Department of Energy have improperly denied agency records requested by Growth Energy, RFA and others under the Freedom of Information Act.

Water

Bloomberg Environment

Colorado Storm Knocked Out Plant Treating Mine Spill Water

<https://news.bloombergenvironment.com/environment-and-energy/colorado-storm-knocked-out-plant-treating-mine-spill-water>

Tripp Baltz

Posted: 4:25pm, March 18, 2019

- Plant up and running again
- Untreated water flowed into Animas River

The recent "bomb cyclone," a major winter storm that struck Colorado, temporarily shut down the EPA's plant treating contaminated wastewater from Gold King Mine, the site of a gigantic 2015 spill.

The mining wastewater, laced with heavy metals, was expected to pour to tributaries that feed the Colorado River, though officials from the Environmental Protection Agency said they don't expect it to harm drinking water or agricultural users downstream.

The storm knocked out power to the Interim Water Treatment Plant in Gladstone, Colo., located in the Bonita Peak Superfund Site, which includes the mine.

The county road which leads to the plant has been overrun with avalanches in the past few weeks, and officials were initially unable to get to the facility, which was diverting water from the mine into nearby treatment ponds.

The EPA said March 16 it restored power to the plant. Crews were able to access it safely, and the plant is now operating normally, the agency said.

The Gladstone plant has been treating water coming out of Gold King, where in August 2015 EPA workers and contractors triggered a spill of about 3 million gallons of mining wastewater and sediment laced with heavy metals into Cement Creek.

Pump Knocked Out

After the storm knocked out power to a pump that was diverting water, a backup generator ran for roughly 20 hours until running out of fuel, the EPA said.

At that point, the pump failed and untreated water began flowing into Cement Creek, which merges with the Animas River above Durango, Colo. The Animas pours into the San Juan, which flows into the Colorado River at Lake Powell in Utah.

The untreated water was expected to reach the San Juan between March 17 and March 19.

The EPA said it expects no impact to downstream users due to the plant's short-term shutdown. During the temporary closure, the additional metals loading into the Animas weren't significantly different from conditions before the agency started treating the discharge from Gold King.

Water samples were taken along the Animas near Silverton, Colo., and results are expected early next week, the agency said.

To contact the reporter on this story: Tripp Baltz in Denver at abaltz@bloomberglaw.com

To contact the editors responsible for this story: Gregory Henderson at gghenderson@bloombergenvironment.com; Chuck McCutcheon at cmccutcheon@bloombergenvironment.com; Anna Yukhananov at ayukhananov@bloombergenvironment.com

Bloomberg Environment

Riverkeeper Can't Force EPA Action on New York Water Standards

<https://news.bloombergenvironment.com/environment-and-energy/riverkeeper-cant-force-epa-action-on-new-york-water-standards>

Peter Hayes

Posted: 1:23pm, March 18, 2019

- Lack of mandatory duty dooms citizen suit
- Court applies 'date-certain' rule

The Environmental Protection Agency won dismissal of a Clean Water Act citizen suit seeking to require the agency to publish New York water quality standards.

The suit, brought by Riverkeeper Inc., the Natural Resources Defense Council Inc., and several other organizations, can't proceed because the EPA wasn't required to act, the U.S. District Court for the Southern District of New York said March 15.

The case fails therefore because a CWA citizen suit is allowed only where there is a non-discretionary duty, the court said.

The court applied the "date-certain" rule of interpretation, under which a mandatory duty exists only if a statute imposes a "bright-line deadline" to act.

It is an issue that has divided the federal circuits, with the Third and Second Circuits taking opposite positions.

The court cited the binding precedent of the Second Circuit, which has applied the date-certain rule in the context of the Clean Air Act, whose citizen suit provision is modeled on the CWA.

The CWA states that if the EPA disapproves standards and a state fails to take action to update its standards within 90 days, the EPA "shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved."

Because this provision doesn't include a "bright-line deadline" it does not impose a non-discretionary duty, the court said.

Judge Vernon S. Broderick issued the ruling.

Pace Environmental Litigation Clinic, Inc. represented the plaintiffs.

The case is [Riverkeeper, Inc. v. Wheeler](#), S.D.N.Y., No. 17-CV-4916, 3/15/19.

To contact the reporter on this story: Peter Hayes in Washington at PHayes@bloomberglaw.com

To contact the editors responsible for this story: Jo-el J. Meyer at jmeyer@bloomberglaw.com; Steven Patrick at spatrick@bloomberglaw.com

The Center for Public Integrity

Companies Polluted Western Waters. Taxpayers Are Picking Up the Tab.

<https://publicintegrity.org/environment/companies-polluted-western-waters-taxpayers-are-picking-up-the-tab/>

Mark Olalde

Posted: March 18, 2019

This story was published in partnership with Mother Jones.

Introduction

The remnants of an abandoned gold and silver mine scar the Little Rocky Mountains just south of the Fort Belknap Indian Community in Montana, bleeding polluted orange water

into streams that meander through the reservation. Warren Morin remembers drinking the once-pristine water while he was growing up in the 1970s. Now it's so acidic it makes his skin burn and turn red on contact.

Pegasus Gold Corp., a Canadian company that owned that mine and several others in the state, went bankrupt and folded 20 years ago. That left a legacy of water pollution and a cleanup bill nearing \$100 million — with no end in sight.

"They took the heart of the mountains away from us," said Morin, chair of the tribal council's natural resources committee.

Pegasus isn't an isolated case. Especially in the drought-prone West, the outdated and opaque regulatory system meant to ensure money is available to restore water and land at gold, copper and other hardrock mines often falls short. Regulators with insufficient funding are tasked with cleaning up a mess left years ago by now-defunct companies. The agencies that required those firms to set aside money underestimated how much it would take, in some cases acquiescing to companies pressing for lower amounts.

"They took the heart of the mountains away from us."

Warren Morin, chair of the Fort Belknap tribal council's natural resources committee

Pollution seeping from these mines regularly contaminates waterways. There's often no end date to treatment costs, billions of dollars of which have been shouldered by taxpayers.

Contributing to this situation is Zortman-Landusky, the mine abutting the Fort Belknap reservation that's the most troublesome of three former Pegasus operations. Brook trout began dying off when miners blasted the mountains to expose ore and have since disappeared from large swaths of the streams, locals said. Beavers and frogs are gone, too. Arsenic and other heavy metals stain water at a nearby treatment plant unnatural colors.

While Pegasus set money aside for reclamation as legally obligated, it proved to be tens of millions of dollars less than the bill so far. Taxpayers remain on the hook for the shortfall. Every year, the state spends up to \$2 million to contain water pollution at Zortman-Landusky — on top of what the cleanup already cost.

"That site's an example of where we and the industry just didn't maintain our full responsibilities, so we've taken that one on the chin, rightfully so," said Chris Dorrington, administrator of the Montana environment department's Air, Energy and Mining Division.

The cost of pollution

It's difficult to put an exact number on the nationwide funding shortfall for hardrock mine cleanup. Each state manages its mining industry differently, and many don't maintain a database of reclamation bonds — the funds meant to guarantee that cleanup costs are covered if a company walks away from its mine.

But the deficiency looks substantial.

Jim Kuipers, who runs a mining consulting firm in Montana, researches mine closure and previously studied reclamation for the U.S. Environmental Protection Agency. He estimated, in a 2003 report by the Center for Science in Public Participation, that there was

between \$1 billion and \$12 billion in unfunded cleanup liability at the country's hardrock mines.

Kuipers said calculations of companies' cleanup costs are improving, decreasing that gap as states base their bonding requirements on more accurate estimates. Even so, he said, as many as half of active hardrock mines could still hold inadequate reclamation bonds.

When the Pegasus mine near the Fort Belknap reservation was new in 1979, Kuipers said, "mines were permitted in a very nonchalant manner, and this whole financial assurance issue was not given a whole lot of concern."

Uncontrolled mining pollution has a literal ripple effect. Mine waste, heavy metals and acidic water often end up in streams and rivers.

Mining has polluted the headwaters of more than 40 percent of Western watersheds, according to the EPA. In 2017, metals mines generated nearly 2 billion pounds of toxic waste. That's roughly the same weight as 5,000 Boeing 747s, and it accounts for a full half of toxic waste generated by all industries across the country.

"The facts are incontrovertible," said Jennifer Krill, executive director of Earthworks, an environmental advocacy group. "Mining is the nation's largest source of toxic pollution. The costs have been counted and are only going to continue to grow."

An Earthworks report studying the mines responsible for 93 percent of U.S. gold production in 2013 found every site had at least one pipeline spill, such as diesel fuel or dangerous cyanide solutions used in gold processing. About three-quarters of the mines also harmed nearby groundwater or surface water, "including impacts to drinking water supplies for residential homes and businesses, loss of fish and wildlife habitat, and fish kills." An estimated 50 million gallons of water polluted with toxic metals still flows from the country's hardrock mines daily, the Associated Press revealed in February.

The National Mining Association, which represents the industry, contends that mines permitted today don't cause the same level of pollution. New operations, according to the group's factsheet on bonds, are constructed "and closed using state-of-the-art environmental safeguards and technology that minimize releases of hazardous substances to the environment."

No end in sight

For the Aaniiih and Nakoda Nations, whose citizens live on the Fort Belknap reservation, the effects of mining are felt daily.

The area around Zortman-Landusky was carved out of the reservation by the Grinnell Agreement in 1895. The U.S. government, which commissioned a trio of explorers to negotiate on its behalf, agreed to pay the tribes on the reservation \$360,000 — the equivalent of about \$11 million today — in return for more than 40,000 acres known to be rich with minerals.

"The object of the negotiations with the Indians mentioned in the law was to secure the cession by them of the mountainous portions of their respective reservations supposed to contain valuable deposits of gold, silver, and copper," the commissioner of Indian affairs reported at the time.

Notes from a meeting between the government's surrogates and members of the tribe in 1895 — taken by a stenographer for the surrogates — show mixed feelings about the deal, with many speaking against it despite a desperate need for aid. "I am thinking of the treaty that I made before with the whites," one tribal member named Little Shield said. "It was just like they took the land away from us for nothing."

Growing up on the reservation, Morin heard stories from elders that many tribal members didn't want to sign the agreement but were threatened with starvation if they declined. Notes from the 1895 meeting show a government negotiator saying hard times would befall the reservation without a deal.

One of the area's highest peaks was among those ripped open in the process of digging the 1,200-acre Zortman-Landusky mine. The tribes called it Spirit Mountain, but miners renamed it "Gold Bug Butte."

Reno Shambo is a tribal member who grew up hunting and camping in the mountains. As an adult, he was part of a crew that dug out piles of mine waste choking the area's streams, and he now stays well clear for fear of the pollution.

Contaminated water also flows past the powwow and Sundance grounds used for community and spiritual gatherings. That's a "perpetual nightmare," Morin said: "Our beliefs are the land is who we are. We're nothing without our land, and our mountains are sacred."

In October 2017, the then-president of the Fort Belknap Indian Community, Mark L. Azure, sent a letter to the state that called Pegasus' bonds "woefully inadequate." The failure to properly reclaim the nearby mine, Azure wrote, meant the tribes could no longer swim in or drink from the area's streams.

"As a result, our community continues to suffer from the effects of water pollution and scars on the landscape," Azure wrote, "and there is no end to that suffering in sight."

Last year — in a shift in oversight — Montana invoked its 1989 "bad actor" statute in relation to the cleanup woes. The case is working its way through the courts, but it could bar Hecla Mining Company, a large player in the silver and gold sectors, from operating in Montana because its CEO, Phillips S. Baker Jr., was an executive at Pegasus in the 1990s. Baker also chairs the board of the National Mining Association.

"It can be argued mining built this state and minerals from Montana fueled the development of our nation," Tom Livers, the former director of Montana's Department of Environmental Quality, wrote in an August opinion column about the decision to invoke the statute. "It also left a legacy of pollution and cleanup we're still addressing today."

Hecla would not make Baker available for an interview with the Center for Public Integrity, but in its court filings and in a statement, company representatives dismissed the suit as meritless. Neither Baker nor Hecla were responsible for Pegasus' failure, the company said, and Pegasus had put up all bonds requested by the state.

"Mr. Baker has been CEO of Hecla for some 15 years," the company wrote in its statement. "Under his leadership, the company has proven its commitment to environmental stewardship."

"It can be argued mining built this state and minerals from Montana fueled the development of our nation. It also left a legacy of pollution and cleanup we're still addressing today."

Tom Livers, former director of Montana's Department of Environmental Quality

A broken system

Environmentalists face an uphill climb in addressing hardrock mining pollution.

In November, Montana voters considered a ballot measure prohibiting the state from permitting new mines if the companies disclosed that they expected the sites to pollute water indefinitely, even after cleanup. An Alaskan measure aimed to create new protections for salmon-spawning streams, a move that would restrict — perhaps halt — the permitting of large new mines.

Industry interests opposing the initiatives outspent environmental advocates more than twice over in Montana and six-to-one in Alaska. Voters rejected both measures by large margins.

Unlike with coal mining, which is also underfunded for proper cleanup, no central law or single federal agency oversees hardrock reclamation. A patchwork of state and federal legislation, beginning with a law barely updated since its passage in 1872, regulates hardrock mine closure. The Bureau of Land Management, the U.S. Forest Service and state regulators oversee a system of governance unique to each state, managed by often-outdated memorandums of understanding.

States have fine-tuned their mining laws since they were stuck with cleanup costs after a rash of bankruptcies wiped out mining companies in the 1990s. But predicting future costs isn't an exact science. States and mining companies often negotiate over the amount of money to set aside.

"We go back and forth with them on getting those costs to be realistic," said Kyle Moselle, associate director at Alaska's Department of Natural Resources.

Experts say that regulators can get played if they're not wary. Companies' consultants can massage subjective aspects of the calculations, like how much inflation might rise over time, to land on a more favorable amount.

Ann Maest, a mining consultant who often works on contract for government agencies and environmental advocacy organizations, researches the impacts of resource extraction on water. To secure permits, mining companies frequently underestimate their potential for long-term water pollution, she said, which leads to insufficient bonds.

"It's rare to find a mine that's really accurately estimated how much it's going to cost to do hydrologic reclamation when they have an acid-producing mine," Maest said.

In Arizona, roughly \$500 million of the more than \$600 million worth of hardrock reclamation bonds overseen by the state's Department of Environmental Quality sit in corporate guarantees and self-assurances. These forms of bonds allow the mining firm or a related entity such as a parent company to guarantee reclamation against its own financial strength.

Because regulators don't call on bonds until a company is in dire straits, experts say these guarantees are effectively worthless. "In Arizona, I'd have a hard time suggesting that if a company goes bankrupt, anybody should expect anything more than zero," said Kuipers, the mining consultant.

Arizona Department of Environmental Quality spokeswoman Erin Jordan said the state's regulations were strengthened in 2016 and keep the cleanup liability with mining companies. The agency, which helps oversee the state's approximately 20 active copper mines, has never faced a situation where a mining firm went under and it needed to spend the company's bond for cleanup, Jordan said.

Other states may be moving away from self-assurances. New Mexico's legislature is considering a bill that would close a loophole left by earlier efforts to stop the practice. Legislation that its supporters believe will be signed into law this year in Colorado would also institute a ban on self-bonds — and strictly limit when permits can be issued for mines expected to pollute water indefinitely.

Mining's legacy

In December 2017, the EPA reversed nascent attempts by the Obama administration to mandate a separate source of mine cleanup funds. Earthworks and others are suing to compel the agency to implement the rule, which a federal judge in 2016 ruled is required by the same 1980 law that created the Superfund program to clean up hazardous waste sites.

The Swift Gulch Water Treatment Plant, which handles pollution from the Zortman-Landusky gold and silver mine complex, sits about a mile from the Fort Belknap Indian Community's powwow grounds. (Fort Belknap Indian Community)

"Holding mining companies accountable for cleaning up their pollution is an idea that's heading backwards under the Trump administration," Earthworks' Krill said.

The U.S. has some of the world's more developed environmental regulations governing mining, and the industry argues these are sufficient. The National Mining Association celebrated the EPA halting its proposed rule in a 2017 press release, calling the regulations "crippling financial and regulatory burdens on the mining industry."

The Forest Service is also planning to overhaul its regulations governing mine cleanup funds. It's unclear whether the rulemaking process will strengthen or weaken existing environmental protections.

The cost of all this reclamation doesn't include sites shuttered prior to regulations passed in the 1970s and 1980s mandating cleanup funds.

As many as 500,000 abandoned hardrock and coal mines are scattered across the country, according to a Bureau of Land Management estimate. Many are small, and the exact number is unknown. While fees from operational coal mines help pay for cleanup of legacy coal sites, no such system exists in the hardrock industry, and federal agencies estimated they spend more than \$80 million on abandoned hardrock cleanup annually.

These abandoned mines, as well as modern mines that hold inadequate bonds, can become the responsibility of the taxpayer-funded Superfund program. EPA figures show it could

take an additional \$50 billion to reclaim the hardrock operations that were abandoned in the West prior to the rules governing mines like Zortman-Landusky in Montana.

The Superfund program doesn't have enough money to clean them all. At a November mine closure summit in Colorado, Victor Ketellapper, who handles Superfund implementation in the Mountains and Plains Region for the EPA, said private capital and environmental groups are increasingly key to plugging funding gaps.

"The environmental cleanup is so high and the land value is so low that it's difficult to do without outside support," Ketellapper said.

He highlighted two gold mines, one in Colorado and the other in South Dakota — which each fell to the Superfund program — as emblematic of the failure to properly calculate bonds. "In both of those cases, the reclamation bonds didn't even come close to addressing the cost of cleanup," he said.

At the Fort Belknap reservation, that failure means a never-ending flow of Montana tax revenue is diverted to fight the pollution.

"The sickening thing about it is the people that did this, they raped the land, they took the money and they ran off," said Morin, with the tribal council. "And they stuck the taxpayer with it."